Straits Bunkering Pte Ltd v Ketua Pengarah Kementerian Perdagangan Dalam Negeri dan Hal Ehwal Pengguna Johor & Ors

HIGH COURT (JOHOR BAHRU) — ORGINATING SUMMONS NO JA-24NCvC-673–11 OF 2018
EVROL MARIETTE PETERS JC
21 NOVEMBER 2019

Admiralty and Shipping — Admiralty jurisdiction and arrest — Ownership of vessels — Whether applicant had locus standi to file application — Whether respondent was beneficial owner of ship — Whether respondent had jurisdiction over the matter — Whether respondents acted with mala fide

This was an application by way of originating summons by Straits Bunkering Pte Ltd ('the applicant'), with regards to the ship, 'MT Abbas' which was arrested by the Southern Region Marine Department according to ss 491B(1)(k) and 491C of the Merchant Shipping Ordinance 1952 ('the MSO'). Based on the preliminary examination conducted by the officers of the Johor Ministry of Domestic Trade and Consumer Affairs ('the second respondent'), it was discovered that the tanks marked as 4S and 4P in MT Abbas contained diesel. Investigations then proceeded under s 20(1) of the Control of Supplies Act 1961 ('the CSA'). The officers confiscated the diesel and issued tenders for the sale of the diesel under ss 11–12 of the CSA. The applicant contended that the respondent did not have jurisdiction over the matter as it claimed that the confiscated diesel were purchased from Singapore and therefore did not come under the purview of the CSA, further it was argued that since no criminal proceedings were instituted against the vessel, the second respondent should have restored the possession of the diesel to the owner, in accordance to s 12(2)(b) of the CSA. The respondent argued that: (a) the applicant was not the registered owner of the vessel, and therefore did not have the locus standi to file this application; and (b) the claim that the applicant was the beneficial owner of MT Abbas, had not been proven. The issues that arose were: (a) whether the respondents had jurisdiction over the controlled article; (b) whether the applicant was the owner of MT Abbas; (c) whether the applicant was the operator of the vessel; and (d) whether the respondent had acted mala fide. The applicant in turn submitted that it was the beneficial owner of MT Abbas on the basis that the sale of MT Abbas by its registered owner, Sirus Marine Sdn Bhd ('Sirus Marine').

Held, dismissing the application with costs of RM5,000:

(1) Based on the scheme and purpose of the CSA, the applicant's argument that the respondent did not have jurisdiction over the matter was untenable. The CSA prohibits hoarding and refusal to sell controlled goods. In this case, the subject matter confiscated which was diesel, was declared a controlled article under the CSA. The court was not convinced that the diesel in question did not fall in the definition of 'controlled article' in the CSA (see paras 14–16 & 18).

(2) Based on the MSO, registration was definitely the cornerstone and pivotal in asserting ownership of a vessel. There was no room for any form of ownership except via registration. This was sufficient to dismiss the application on the basis that the applicant had no locus standi (see paras 23–24).

(3) Since MT Abbas was registered in the name of Sirus Marine, that amounted to prima facie evidence that the registered and beneficial owner was in fact Sirus Marine. Therefore, the applicant bore the legal burden of proof to rebut the presumption. Based on oral and documentary evidence presented, there was no indication that the applicant had taken steps to transfer the vessel based on the statutory requirements of the MSO. The court had scrutinised the bill of sale and found that it was between Sirus Marine and Straits Bunkering Sdn Bhd (instead of Straits Bunkering Pte Ltd who as the applicant in this case) which was a separate entity. Therefore, the applicant had not discharged the burden of proving that it was the beneficial owner of MT Abbas. Further, the document adduced by the applicant was rendered neither contemporaneous nor independent by the court (see paras 30–31, 34 & 39).

(4) Because the applicant did not have any evidence, their case was bald, unsubstantiated and even spurious. The court was of the view that the applicant had failed to discharge the burden of proving mala fide on the part of the respondents (see para 49).

[Bahasa Malaysia summary

Ini merupakan satu permohonan melalui saman pemula oleh Straits Bunkering Pte Lrd ('pemohon'), berkaitan dengan kapal 'MT Abbas' yang ditahan di Jabatan Laut Bahagian Selatan selaras dengan ss 49B(1)(k) dan 491C Merchant Shipping Ordinance 1952 ('MSO'). Berdasarkan pemeriksaan awal yang dilakukan oleh pegawai Kementerian Perdagangang dan Hal Ehwal Pengguna Johor ('responden kedua'), ianya didapati bahawa tank bertanda 4S dan 4P di MT Abbas mengandungi diesel. Siasatan kemudiannya dilakukan dibawah s 20(1) Akta Kawalan Bekalan 1961 ('AKB'). Pegawai-pegawai tersebut telah merampas diesel dan mengeluarkan tender untuk penjualan diesel tersebut dibawah ss 11–12 AKB. Pemohon mengatakan bahawa responden tidak mempunyai bidang kuasa atas perkara

tersebut kerana pemohon mengatakan bahawa diesel tersebut telah dibeli dari Singapura dan oleh itu tidak jatuh dibawah skop AKB, lanjutan itu, ianya juga dihujahkan bahawa memandangkan tiada prosiding jenayah dilakukan terhadap kapal tersebut, responden kedua sepatutnya memulangkan milikan diesel tersebut kepada pemiliknya selaras dengan s 12(2)(b) AKB. Responden menghujahkan bahawa: (a) pemohon bukan pemilik berdaftar kapal, oleh itu tidak mempunyai locus standi untuk memfailkan permohonan ini; dan (b) sama ada pemohon adalah pemilik MT Abbas; (c) sama ada pemohon adalah pengendali kapal tersebut; dan (d) sama ada responden bertindak secara mala fide. Pemohon kemudiannya menghujahkan bahawa dia merupakan pemilik benefisial MT Abbas atas dasar penjualan MT Abbas oleh pemilik berdaftarnya, Sirus Marine Sdn Bhd ('Sirus Marine').

Diputuskan, menolak permohonan dengan kos RM5,000:

(1) Berdasarkan skim dan tujuan AKB, hujahan pemohon bahawa responden tidak mempunyai bidangkuasa terhadap perkara ini tidak dapat dipertahankan. AKB menghalang penyorokan dan kengganan untuk menjual barangan. Dalam kes ini, perkara rampasan iaitu diesel, yang diisytiharkan sebagai artikel terkawal dibawah AKB. Mahkamah tidak diyakinkan bahwa diesel tersebut tidak terjumlah kepada takrif artikel terkawal dalam AKB (lihat perenggan 14–16 & 18).

(2) Berdasarkan MSO, pendaftaran adalah asas dan penting dalam menunjukan pemilikan satu kapal. Tiada ruang untuk apa-apa jenis milikan lain kecuali melalui pendaftaran. Ini adalah memadai untuk menolak permohonan ini atas dasar pemohon tidak mempunyai locus standi (lihat perenggan 23–24).

(3) Memandangkan MT Abbas didaftarkan atas nama Sirus Marine, ianya terjumlah kepada keterangan prima facie bahawa pemilik berdaftar dan benefisial adalah Sirus Marine. Oleh itu, pemohon mempunyai beban pembuktian untuk mematahkan anggapan. Berdasarkan keterangan lisan dan dokumentar yang dikemukakan, tiada tanda yang pemohon telah mengambil langkah-langkah untuk memindahkan kapal tersebut berdasarkan keperluan statutori MSO. Mahkamah telah meneliti bil jualan dan mendapati bahawa ianya adalah antara Sirus Marine dan Straits Bunkering Sdn Bhd (dan bukannya Straits Bunkering Pte Ltd yang merupakan pemohon dalam kes ini) yang merupakan satu entiti yang berbeza. Oleh itu pemohon tidak melepaskan beban untuk membuktikan bahawa dia merupakan pemilik benefisial MT Abbas. Lanjutan itu, dokumen yang dikemukakan oleh pemohon adalah diputuskan tidak sezaman ataupun bebas oleh mahkamah (lihat perenggan 30–31, 34 & 39).

(4) Oleh sebab pemohon tidak mempunyai apa-apa keterangan, kesnya adalah kosong, tanpa sokongan dan juga palsu. Mahkamah

A berpandangan bahawa pemohon gagal untuk membuktikan mala fide atas pihak responden (lihat perenggan 49).]

Cases referred to

B *Bumiputra-Commerce Bank Bhd v Augusto Pompeo Romei & Anor* [2014] 3 MLJ 672; [2014] 6 CLJ 17, CA (refd)
EP Royappa v State of Tamil Nadu & Anor [1974] 4 SCC 3, SC (refd)
JMJ Food & Beverages Sdn Bhd v Mohamad Zukrillah Bin Ismail and Ors [2016] MLJU 1499, CA (refd)
C *Pan-Pacific Construction Holdings Sdn Bhd v Ngiu-Kee Corporation (M) Bhd & Anor* [2010] 6 CLJ 721, FC (refd)
People's Insurance Co (M) Sdn Bhd v People's Insurance Co Ltd & Ors [1986] 1 MLJ 68 (refd)
Takashimaya Construction & Development Sdn Bhd & Anor v MY Influx Sdn Bhd And Other Appeals [2019] 1 LNS 689, CA (refd)
D *The Kapitan Temkin* [1998] 2 SLR(R) 53, HC (refd)
The 'Makassar Caraka Jaya Niaga III-39' [2010] SGHC 306; [2011] 1 SLR 982, HC (refd)
The 'Min Rui' [2016] SGHC 183; [2016] 5 SLR 667, HC (refd)
E *Union of India and Ors v Ashok Kumar and Ors* [2005] 8 SCC 760, SC (refd)
Wan Mazlan Mohamed Woojdy lwn Eagle One Investment Ltd dan lain-lain [2016] MLJU 325, HC (refd)

Legislation referred to

F Control of Supplies Act 1961 ss 2, 5, 8, 11, 12, 12(1), (2)(b), 20(1)
Evidence Act 1950 s 103
Interpretation Act 1948 and 1967 s 17A
Merchant Shipping Ordinance 1952 ss 12, 22, 34, 35, 36, 491A, 491B(1)(k), 491C, 491C(3)

G *Adrian Silvarajoo (Ramli Yusuff and Elfira Rosellini with him) (Ramli Yusuff & Co) for the applicant.*
Thalha Bacok (Jailani Rahman with him) (Senior Federal Counsel) for the respondents.

H **Evrol Mariette Peters JC:**

THE APPLICATION

I **[1]** This is the applicant's application by way of originating summons ('the application') for the following relief:

(a) that the custody and full control of the vessel or cargo of MT Abbas ('MT Abbas') to be given to the second respondent for the purposes of

maintenance and safe-keeping, and for the costs to be borne by the respondents until the disposal of this application;

(b) that the first and second respondents, through its agents, officers or employees to be prohibited from dealing, whether directly or indirectly with MT Abbas and its cargo;

(c) that the first and second respondents to be held responsible for the quality and integrity of the cargo of MT Abbas until the disposal of this application; and

(d) that the first and second respondents to release immediately to the applicant, the cargo of MT Abbas.

[2] After perusing the affidavits and exhibits attached, and hearing the submissions of counsel for both parties, I dismissed the application, and the following are my reasons:

THE BACKGROUND FACTS

[3] On 3 October 2018, MT Abbas was arrested by the Southern Region Marine Department or Jabatan Laut Wilayah Selatan ('JLWS') (which is not a party to this application) according to ss 491B(1)(k) and 491C of the Merchant Shipping Ordinance 1952 ('the MSO'). The sections read:

Section 491B — *Notification to the Director of Marine of activity engaged by a ship*

(1) Any ship which is engaged or intends to engage in any of the following activities:

...

(k) ship-to-ship activity;

in Malaysian waters shall be required to notify the Director of Marine, in such form as may be prescribed by him, of such activity.

...

Section 491C — *Power of the Director of Marine*

(1) The Director of Marine may, where he has reason to believe that an offence has been committed under this Part —

...

(c) detain such ship including any equipment, gear, appurtenance, cargo or thing belonging to or on board that ship;

[4] On 7 October 2018, the officers of the second respondent proceeded to conduct a preliminary examination under s 8 of the Control of Supplies Act 1961 ('the CSA'), which reads:

Section 8 — *Power of Controller to obtain information*

(1) The Controller or any supplies officer may by writing under his hand or by notification in the *Gazette* require any person or class or description of persons or all persons —

(a) to furnish him or such public officer as may be specified in the requisition with full and accurate periodical or other returns or information in respect of any supplies specified therein, showing all or any of the following particulars:

(i) the quantity thereof in his or their possession or under his or their control;

(ii) the cost thereof or expense incurred in respect thereof;

(iii) the price charged or received by him or them therefor; and

(iv) any other information which the Controller may deem necessary to request in respect thereof;

(b) to produce for inspection all or any books or documents relating to any supplies in his or their possession or under his or their control;

(c) to register his or their name and address and such other particulars and in such manner as the Controller may specify; and

(d) to maintain such records or to make such returns containing such particulars relating to the acquisition, disposal, deposit, withdrawal, production, treatment, keeping, storage, movement, transport, distribution, use and consumption of any supplies as the Controller may specify.

[5] On 10 October 2018, the matter together with the relevant documentation were submitted to the second respondent.

[6] Based on the examination conducted by the officers of the second respondent, it was discovered that the tanks marked as 4S and 4P in MT Abbas contained diesel. Investigations, therefore, proceeded under s 20(1) of the CSA, which reads:

Section 20 — *Removal of controlled articles from business premises and storage of controlled articles in premises other than premises specified in the licence, and dealing in controlled articles otherwise than in normal course of business*

(1) Any person who removes any controlled article or causes or permits any controlled article to be removed from any premises specified in the licence or stores any controlled article or causes or permits any controlled article to be stored in any premises, other than premises specified in the licence or premises approved by the Controller for such storage, shall be guilty of an offence against this Act.

[7] The officers of second respondent confiscated the diesel and proceeded

to issue tenders for the sale of such under ss 11 and 12 respectively of the CSA. The relevant parts of the provisions read:

> Section 11 — *Power of Controller to take possession of controlled articles, vehicles, vessels and other articles*
>
> (1) If the Controller or supplies officer has reason to believe that any person is committing an offence against this Act, *he may take possession in such manner as he shall deem fit of any controlled article* in respect of which he has reason to believe such an offence has been committed or of any vehicle, vessel or other article by means of which any such offence has been committed or which he has reason to believe is intended to be used for the commission of that offence.
>
> ...
>
> Section 12 — *Action after taking of possession*
>
> (1) Where, under section 11, possession has been taken of any controlled article, then —
>
> (a) if it is decided to institute criminal proceedings against any person in respect of an offence against this Act involving the controlled article, the Controller may—
>
> (i) retain the controlled article until the conclusion of those criminal proceedings and, except where the court orders confiscation thereof under section 26, shall dispose thereof in such manner as the court may order; or
>
> (ii) *order that the controlled article be sold in such manner as will secure a reasonable price for it in the circumstances*, and the proceeds of sale shall be kept until the conclusion of those criminal proceedings and, except where the court orders confiscation thereof under section 26, shall be disposed of in such manner as the court may order; (Emphasis added.)

THE APPLICANT'S CASE

[8] The applicant contended that the respondents did not have jurisdiction over this matter as it claimed that the confiscated diesel was purchased from Singapore and, as such, did not come under the purview of the CSA.

[9] The applicant's further argument was based on the application of s 12 of the CSA. The provision reads:

> Section 12 — *Action after taking of possession*
>
> (1) Where, under section 11, possession has been taken of any controlled article, then —
>
> (a) *if it is decided to institute criminal proceedings against any person* in respect of an offence against this Act involving the controlled article, the Controller may —

A (i) retain the controlled article until the conclusion of those criminal proceedings and, except where the court orders confiscation thereof under section 26, shall dispose thereof in such manner as the court may order; or

B (ii) order that the controlled article be sold in such manner as will secure a reasonable price for it in the circumstances, and the proceeds of sale shall be kept until the conclusion of those criminal proceedings and, except where the court orders confiscation thereof under section 26, shall be disposed of in such manner as the court may order;

C (b) if it is otherwise decided, the Controller shall either restore possession to the owner or, instead of restoring possession, pay to the owner of the controlled article the maximum price fixed by any written law in respect of the controlled article or, if no maximum price has been so fixed, the market price of the controlled article, less an amount not exceeding twenty-five per centum of the maximum price or market price, as the case may be, being the expenses certified by the Controller to have been incurred by him in taking possession, storing and restoring possession of the controlled article as aforesaid.

D (2) Where, under section 11, possession has been taken of any vehicle, vessel or thing other than a controlled article, then —

E (a) if it is decided to institute criminal proceedings against any person in respect of an offence against this Act involving the vehicle, vessel or thing, the Controller may —

F (i) retain the vehicle, vessel or thing until the conclusion of those criminal proceedings and, except where the court orders confiscation thereof under section 26, shall dispose thereof in such manner as the court may order; or

G (ii) temporarily return the vehicle, vessel or thing to the owner thereof on security being furnished to the satisfaction of the Controller that the vehicle, vessel or thing will be surrendered to him on demand;

(b) *if it is otherwise decided, the Controller shall restore possession to the owner.* (Emphasis added.)

H **[10]** Counsel for the applicant argued that since no criminal proceedings were instituted against the vessel pursuant to s 12(1) of the CSA, the second respondent should have, therefore, restored possession of the diesel to the owner in accordance with s 12(2)(b).

I **[11]** Counsel for the applicant further argued that as the beneficial owner, the applicant's claim was based on s 491C(3) of the MSO, which reads:

Section 491C — *Powers of the Director of Marine*

(3) The ship or any equipment, gear, appurtenance, cargo or thing detained under

subsection (1) may be released to the *owner, master or agent* of the ship subject to such terms and conditions as the Director of Marine may impose and subject, in any case, to sufficient security being furnished to the satisfaction of the Director of Marine. (Emphasis added.)

THE RESPONDENTS' CASE

[12] Counsel for the respondents relied heavily on the argument that the applicant was not the registered owner of the vessel, and by virtue of that fact, they had no locus standi to file this application.

[13] Alternatively, counsel for the respondents argued that the claim that the applicant was the beneficial owner of MT Abbas, had not been proved.

CONTENTIONS AND FINDINGS

Whether the respondents had jurisdiction over the controlled article

[14] Counsel for the applicant argued that the respondents did not have jurisdiction over the matter since the diesel was purchased in Singapore.

[15] In my view, this argument is untenable, bearing in mind, the scheme and purpose of the CSA. The CSA provides for the control and rationing of supplies of controlled articles. The CSA prohibits hoarding and refusal to sell controlled goods. Section 2 of the CSA defines a 'controlled article' to mean *any article* or food which has been declared to be a controlled article by an order under s 5, and includes a rationed article. Section 5 of the CSA reads:

Section 5 — *Declaration of controlled and rationed articles*

The Minister may, by order published in the *Gazette*, declare, either generally or with reference to some specified part of Malaysia —

(a) any article or food to be a controlled article or to be a rationed article or both; or

(b) any controlled article or rationed article to be marked with any marking as he may specify.

[16] It is pertinent to note that the subject matter confiscated was diesel and it is undisputed that diesel fuel is declared as a controlled article under the CSA.

[17] The respondents had exercised its powers, according to the provisions of s 11 of the CSA, which reads:

Section 11 — *Power of Controller to take possession of controlled articles, vehicles, vessels and other articles*

A (1) If the Controller or supplies officer has reason to believe that any person is committing an offence against this Act, *he may take possession in such manner as he shall deem fit of any controlled article* in respect of which he has reason to believe such an offence has been committed or of any vehicle, vessel or other article by means of which any such offence has been B committed or which he has reason to believe is intended to be used for the commission of that offence.

(2) Any person who obstructs or impedes the Controller or any supplies officer in the lawful exercise of his powers under this section shall be guilty of an offence against this Act. (Emphasis added.)

C

[18] Counsel for the applicant had not convinced the court that the diesel in question does not fall within the definition of 'any controlled article' within the purview of the CSA.

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[19] In any event, it is imperative for the applicant to first establish locus standi to file this application, by proving that it was the owner of MT Abbas.

Whether the applicant was the owner of MT Abbas

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[20] It was undisputed that the registered owner of MT Abbas is Sirius Marine Sdn Bhd and not the applicant. Counsel for the respondents argued that the very fact that the applicant was not the registered owner of MT Abbas confirmed their submission that the latter had no locus standi to file this F application.

[21] Counsel for the respondents further contended that the scheme of the MSO was based on registration, and that this application should be dismissed due to the fact that the applicant was not the registered owner of MT Abbas, G and therefore lacked locus standi.

[22] As pointed out by counsel for the respondents, there are several provisions in the MSO which support the argument that registration is its H cornerstone, and that in alignment with the scheme of the MSO, any entity that claims to be the owner of a vessel must first be registered as such. The relevant provisions include ss 12, 22, 34, 35 and 36 of the MSO. The sections read:

I Section 12 — *Obligation to register Malaysian ships*

(1) Every Malaysian ship unless so exempted *shall be registered* under this Ordinance.

(2) If a ship required by this Ordinance to be registered *is not so registered, she shall not be recognised as a Malaysian ship*.

(3) A ship required by this Ordinance to be registered *may be detained until the master of the ship, if so required, produces the certificate and of registry of the ship*.

(4) The Minister may prescribe the manner in which ships or classes of ships belonging to the Government of Malaysia or any State thereof or any statutory body therein may be registered under this Ordinance.

...

Section 22 — *Certificate of registry*

(1) The certificate of registry shall be in such form as may be prescribed by the Minister.

(2) The certificate of registry shall state —

(a) the name of the owner of the ship, his occupation and address, and if there are more owners than one, the proportions in which they are interested in the ship;

(b) the name of the master and the particulars of his certificate of competency;

(c) the date and place where the ship was built;

(d) the particulars given in the certificate of measurement; and

(e) such other particulars as may be prescribed.

(2A) *Every registered owner of a registered Malaysian ship shall as soon as possible and in any case not later than fourteen days inform the registrar in writing of any changes affecting the particulars required to be stated in the certificate of registry under subsection (2).*

(2B) Any person who contravenes subsection (2A) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit.

(3) The Minister may by regulation prescribe the form of endorsements that may be made on the certificate of registry to record the changes in the particulars specified in subsection (2) without issuing a new certificate.

...

Section 34 — *Transfer of ship or share*

(1) A registered Malaysian ship or a share therein when disposed of to a person or corporation qualified to own a Malaysian ship *shall be transferred by a bill of sale.*

(2) *The bill of sale shall be in the prescribed form* and shall contain such description of the ship as in the certificate of registry or some *other description sufficient to identify the ship to the satisfaction of the registrar* and shall be executed by the transferor or his agent and the transferee or his agent and attested by two witnesses.

...

A Section 35 — *Declaration of transfer*

Where a registered ship or a share therein is transferred, the transferee shall not be entitled to be registered as the owner thereof *until he, or in the case of a corporation, the person authorised to make declarations on behalf of the corporation, has made and signed the declaration* (hereinafter called a 'declaration of transfer') referring to the ship, and containing —

B

(a) a statement of the qualification of the transferee to own a Malaysian ship, or, if the transferee is a corporation, of such circumstances of the constitution and business thereof as prove it to be qualified to own a Malaysian ship; and

C

(b) a declaration to the best of his knowledge and belief that no unqualified person or corporation is entitled as owner to any legal, beneficial or equitable interest in the ship or any share therein.

D ...

Section 36 — *Registry of transfer*

Every bill of sale for the transfer of a registered ship or of a share therein when duly executed *shall be produced to the registrar of the port of registry with the declaration of transfer*; the registrar shall thereupon enter in the register book in the order of the production the name of the transferee as the owner of the ship or share and shall endorse on the bill of sale the fact that entry has been made.

E

[23] In my view, and based on the perusal of the provisions of the MSO, registration is definitely the cornerstone and pivotal in asserting ownership of a vessel. On this note, I am mindful that the purpose and object underlying the statute should be heeded. This is prescribed by s 17A of the Interpretation Act 1948 and 1967, which reads:

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Section 17A — *Regard to be had to the purpose of Act*

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In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

H

[24] Taking into account the relevant provisions and the scheme of the MSO, in my view, there is no room for any form of ownership except via registration. This fact alone is sufficient to dismiss this application on the basis that the applicant has no locus standi to even file this application.

I

[25] The applicant submitted that it was the beneficial owner of MT Abbas on the basis of the sale of MT Abbas by its registered owner, Sirius Marine Sdn Bhd, which the applicant claims is proved by the bill of sale exhibited as SN1 attached to the corrective affidavit, dated 22 November 2018 to the

affidavit-in-support of the applicant deposed to by Mohammad Shafiq bin Nezammuddin, dated 19 November 2018.

[26] It must be borne in mind that since the applicant claims to be the beneficial owner of MT Abbas, it, therefore, has the legal burden to prove that fact, as stipulated by s 103 of the Evidence Act 1950, which reads:

> Section 103 — *Burden of proof as to particular fact*
>
> The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

[27] See also *Pan-Pacific Construction Holdings Sdn Bhd v Ngiu-Kee Corp (M) Bhd & Anor* [2010] MLJU 269; [2010] 6 CLJ 721 (FC).

[28] The burden of proof was further explained by the Singapore High Court case of *'The Kapitan Temkin'* [1998] 2 SLR(R) 537, in the words of GP Selvam J:

> What is a prima facie case to establish jurisdiction depends on the facts of the case. ... [T]he certificate of *registration is important documentary evidence in deciding who the beneficial owners of a ship* for purposes of jurisdiction are, especially when it is produced and relied upon on behalf of the State or a department which issued the certificate. It is so because the certificate of registration is also a certificate of ownership. ... '... *It is not conclusive but furnishes at least prima facie evidence of the registered owner being the true owner, thus resulting in a shifting of the burden of proof. Whoever, without being registered, claims ownership must displace that prima facie evidence*'. (Emphasis added.)

[29] The passage above was endorsed by the Singapore High Court in *The 'Makassar Caraka Jaya Niaga III-39'* [2010] SGHC 306; [2011] 1 SLR 982 and *The 'Min Rui'* [2016] SGHC 183; [2016] 5 SLR 667.

[30] It appears, therefore, that since MT Abbas is registered in the name of Sirius Marine Sdn Bhd, that itself is prima facie evidence that the registered as well as the beneficial owner is in fact Sirius Marine Sdn Bhd. The applicant, therefore, has the legal burden to rebut that presumption.

[31] Although the applicant claims that there was a bill of sale for MT Abbas, based on both the oral and documentary evidence, there was no indication of any step taken by the Applicant to comply with the procedure pertaining to the transfer of the vessel, as prescribed by ss 34– 36 of the MSO.

[32] Furthermore, a scrutiny of the Bill of Sale reveals that the sale is between Sirus Marine Sdn Bhd and Straits Bunkering Sdn Bhd, whereas this application

A is filed by Straits Bunkering Pte Ltd, which points to a separate entity altogether from Straits Bunkering Sdn Bhd.

[33] On this point, reference should be made to the cases of *Wan Mazlan Mohamed Woojdy lwn Eagle One Investment Ltd dan lain-lain* [2016] MLJU 325 and *People's Insurance Co (M) Sdn Bhd v People's Insurance Co Ltd & Ors* [1986] 1 MLJ 68, where it was stated in the latter by Zakaria Yatim J:

> The plaintiff company is a legal entity by itself. Although it is a subsidiary of the first defendant company, the plaintiff company maintains its own separate entity. In *Ebbw Vale Urban District Council v South Wales Traffic Area Licensing Authority* [1951] 2 KB 366, Cohen LJ said:
>
> > Under the ordinary rules of law, a parent company and subsidiary company, even a 100 percent subsidiary company, are distinct legal entitles.

[34] This passage was endorsed by the Court of Appeal in the cases of *Takashimaya Construction & Development Sdn Bhd & Anor v MY Influx Sdn Bhd And Other Appeals* [2019] 1 LNS 689 and *Bumiputra-Commerce Bank Bhd v Augusto Pompeo Romei & Anor* [2014] 3 MLJ 672; [2014] 6 CLJ 17.

[35] In my view, therefore, the applicant has not discharged the burden of proving that it is the beneficial owner of MT Abbas.

Whether the applicant was the operator of the vessel

[36] The applicant proceeded to argue that it was the operator by virtue of the definition of owner found in s 491A of the MSO, which reads:

> Section 491A — *Interpretation and application*
>
> (1) For the purposes of this Part and the rules made thereunder, unless the context otherwise requires —
>
> 'owner' includes a charterer *or operator* of a ship; (Emphasis added.)

[37] Counsel for the respondents maintained that the definition of owner still required registration, and that in any event, there was no evidence that the applicant was the operator of MT Abbas.

[38] It is material to note that during the hearing of this application, counsel for the applicant requested for time to provide documentation to prove that the applicant was indeed the operator of MT Abbas. I acceded to this request. However, the sole document that the applicant subsequently provided was a letter dated 1 August 2019, from the applicant itself to one Xelta Marine Sdn

Bhd, exhibited as S1 attached to the affidavit of the applicant deposed to by Mohammad Shafiq bin Nezammuddin, dated 7 August 2019. The letter reads:

> Dear Sirs,
>
> *Re: Appointment of Agency Matters for MT Abbas Vessel (IMO: 8704262)*
>
> We refer to the above matter.
>
> 1. We are the beneficial owner and operator for MT Abbas vessel (IMO: 8704262), and hereby appoints Xelta Marine Sdn Bhd as an agent to liaise with all Malaysia Government agencies for the purpose, including but not limited to documentation and all necessary actions and application relating to the operation of MT Abbas vessel.
>
> 2. Please proceed as per our instructions.
>
> Thanks and regards,
>
> Bilal Ameenullah
>
> Technical Superintendent
>
> Straits Bunkering Pte Ltd

[39] In my view, this document is unacceptable as proof that the applicant is the beneficial owner or the operator of MT Abbas. The applicant was expected to produce a contemporaneous and independent document. Instead, what the applicant adduced was a document created by itself on 1 August 2019, which was in fact a day after the hearing of the application on 31 July 2019. This rendered the document neither contemporaneous nor independent. In fact, the letter was a self-serving document that carried no weight at all whatsoever.

Whether the respondents had acted mala fide

[40] Counsel for the applicant had also submitted that the respondent had acted mala fide in issuing tenders for the sale of the diesel, and claimed that the delay in commencing criminal proceedings against the applicant, and the failure to return MT Abbas to the applicant, demonstrated the lack of bona fide on the part of the respondents.

[41] The respondents, on the other hand, explained that they had not completed their investigations, and that the refusal to return MT Abbas to the applicant was because the applicant was not the registered owner.

[42] The applicant's argument was further laced with allegations of conspiracy, and that the Director of JLWS had pressured the officer of the Agensi Penguatkuasaan Maritim Malaysia ('APPM') to arrest MT Abbas.

[43] It is pertinent to note that mala fide is an intentional doing of a wrong act without just cause or excuse and is done with an intention to inflict an injury, or under such circumstances that the law will imply an evil motive to act.

[44] Mala fide or bad faith on the part of the decision-maker vitiates a decision even though the authority acts within the legal limits of its powers. The doctrine implies a dishonest intention or corrupt motive or personal animosity or vendetta on the part of the authority. It may also be used in a sense wider than corrupt motive, to denote all those grounds which indicate abuse of power, such as irrelevant considerations, and improper purpose. In this way, mala fide becomes a synonym for abuse of powers: *Administrative Law of Malaysia and Singapore* (4th Ed at pp 411–412), MP Jain, quoted in *JMJ Food & Beverages Sdn Bhd v Mohamad Zukrillah Bin Ismail and Ors* [2016] MLJU 1499.

[45] It is crucial to be cognisant that an allegation of mala fide must be proved and cannot be premised on bare averments. It has to be established on the basis of available cogent evidence, and not merely on some ill-defined and unsupported material. The court cannot draw inferences, much less a conclusion about the existence of mala fide on unsubstantiated allegations.

[46] When the allegations of mala fide are made and when relief seeks to interfere with a particular action of the government or its functionaries, such allegations have to be established and proved to the extent of an incontrovertible finding by the court.

[47] It is trite law that the burden of proving mala fide is on the person making the allegations and the burden is a heavy one: *EP Royappa v State of Tamil Nadu & Anor* [1974] 4 SCC 3.

[48] The seriousness of allegations of mala fide demands proof of high order of credibility, and the court should be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of office having high responsibility: *Union of India and Ors v Ashok Kumar and Ors* [2005] 8 SCC 760.

[49] Without any evidence, the applicant's allegations in this case remain bald, unsubstantiated and even spurious. I am of the view, therefore, that the applicant had failed to discharge the burden of proving mala fide on the part of the respondents.

CONCLUSION

[50] Based on the aforesaid reasons, and after judicious consideration of the documentary evidence and submissions of counsel for both parties, I dismissed the application with costs in the amount of MYR5,000 (subject to allocatur fees).

Application dismissed with costs of RM5,000.

Reported by Izzat Fauzan